

# KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

## DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

### DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No:	<b>2024/70/92497/W</b>
Site Address:	42A, Station Road, Fenay Bridge, Huddersfield, HD8 0AD
Description:	Variation of condition 2 (plans list) on previous permission 2020/93329 (erection of one dwelling and associated works) to increase the finished floor levels and overall ridge height of the dwelling, amend the internal layout and to include a garage
Recommending Officer:	Lucy Taylor

#### **DECISION – VARIATION OF CONDITION REFUSED**

**I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.**

John Holmes

***AUTHORISED OFFICER***

Date: 12-Dec-2024

## **Officer Report.**

**Reference:** 2024/92497

**Location:** 42A, Station Road, Fenay Bridge, Huddersfield, HD8 0AD

**Proposal:** Variation of condition 2 (plans list) on previous permission 2020/93329 (erection of one dwelling and associated works) to increase the finished floor levels and overall ridge height of the dwelling, amend the internal layout and to include a garage

## **Site Description.**

Prior to the submission of planning application 2020/93329, the site comprised of an area of hard surfacing, used for parking and turning associated with No. 42A Station Road, along with a garden area and soft landscaping belonging to this property. Planning application 2020/93329 granted planning permission for one dwelling and associated works, with the submitted application form confirming that works commenced on site on 01.12.2023.

No. 42A and the approved dwelling are served by a long driveway that is accessed off Station Road.

## **Description of Proposal.**

The application is seeking to vary condition 2 (plans list) on previous permission 2020/93329 (erection of one dwelling and associated works).

Alterations to the plans, compared to those approved under application 2020/93329, are as follows:

- Eaves height at rear to increase from 5.25 metres to 5.45 metres.
- Roof pitch to become 25 degrees.
- Floor levels altered and ground floor rear windows to be set 3 metres above ground level (previous set 2.85 metres above ground level).
- Addition of front projection. Projection of 1.25 metres, width of 5.8 metres and height of 4 metres.
- Car park over lower floor changed to accommodation, increasing the width of the dwelling at ground floor level by 3 metres.
- Addition of garage. The garage would be located to the front of the dwelling, to be sited within the long driveway. It would have a width of 5.9 metres, a depth of 5 metres and a height of 5.5 metres.

## **History of Negotiations / Amendments Received.**

The case officer informed the planning agent that the likelihood for this application was that it would be recommended to be refused on visual and residential amenity grounds. The planning agent confirmed to the case officer they wished for the application to proceed to determination.

Notwithstanding this, in response to the consultation from KC Highways Development Management, the planning agent submitted an amended plan and also provided confirmation via email that the block paved area would be used for turning. Although an amended plan was submitted, it was not considered necessary to carry out re-advertisement, given that the plan was to address the consultation response from KC Highways Development Management, with the same principle of development remaining the development proposal in this case. It was therefore concluded the public was adequately alerted to the nature of the proposed development.

### **Relevant Planning History.**

- 2016/91893 – Outline application for erection of one dwelling – *Refused.*
- 2017/91544 – Outline for erection of one dwelling with details of access. *Approved.*
- 2018/92860 – Erection of detached dwelling. *Refused, Appeal Dismissed.*
- 2020/93329 – Erection of one dwelling and associated works. *Approved.*
- 2021/93062 – Variation of condition 2 (plans) on previous permission no. 2020/93329 for erection of one dwelling and associated works. *Approved.*
- 2023/92810 – Discharge of condition 4 (mitigation measures coal mining legacy) on previous permission for variation condition 2 (plans) on previous permission 2020/93329 for erection of one dwelling and associated works. *Partially Discharged.*
- 2024/90690 – Variation of condition 2 (plans list) on previous permission 2020/93329 (erection of one dwelling and associated works) to increase the finished floor levels and overall ridge height of the dwelling.

Application 2024/90690 granted permission for the following variations to 2020/93329:

- Front projection: 1.25m from the primary elevation, 5.7m width with gable frontage finishing 4m above ground level (eaves the same); this would have a similar door and window arrangement.

- Overall height of the main body's roof from the front elevation reduced by 0.3m to 4.4m.
- Increase in width by 0.2m to 10.1m for the host.
- Decrease in overall height by 0.1m to 7.4m and increase in eaves height by 0.1m to 5.4m from ground (measured from rear). The pitch degree has been lowered to reduce its profile.
- Rear elevation bi-folds at ground level would both have an additional bifold panel, one range would be set across the parking deck and host's elevation; the Juliet windows at first floor rear elevation would be reduced to two either side with one small two-light window in the centre. (Officer note: this is the same as approved in application 2021/93062).
- Its elevated parking area would have its elevations increased by 0.2m to 3.8m from ground level (measured from rear).
- Solider coursing at northeast elevation would be simplified to string coursing.

### **Representations.**

We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters, which expired on 16<sup>th</sup> October 2024.

In response to publicity, two objections were received. These objections set out the following concerns:

#### **Residential Amenity:**

- This latest variation application will make an already bad situation intolerable for neighbours.
- Boundary of proposed development is closer to neighbouring property and concerned about the increased noise level and how this will impact enjoyment of neighbouring garden.
- Original plans already beers down on neighbour property and garden, blocking light and imposing on privacy, this variation will make this even worse.
- Concerned that the proposed building is going to overlook neighbouring property and impact privacy.
- Inevitable noise from a major build.

### Other Matters:

In relation to the representations regarding land ownership. The granting of planning permission does not override any private rights of ownership, and it would be the applicant's responsibility to ensure they have the legal right to carry out the approved works, as construction and maintenance may involve access to land outside your ownership.

In relation to the representations regarding excavation for foundation of the dwelling. This is not considered to be a material consideration significant weight can be afforded in the determination of this Variation of Conditions application, as permission to erect a dwelling has already been established under previous application 2020/93329. This was directly addressed within the original planning permission, whereby The Coal Authority raised no objection to the proposal subject to conditions being attached for assurance that coal mining legacy issues on the site were fully addressed and remediated to prevent risks to human health. Furthermore, Paragraph 197 of the NPPF states that where a site is affected by land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

Officers note the matters raised regarding the value of neighbouring properties. In this case it is considered this is not a material planning consideration that can be afforded significant weight in the determination of this application.

### **Consultation Responses.**

KC Highways Development Management (formal & informal) – following the submission of an amended plans and confirmation that the block paved area will be used for turning, Highways Development Management confirm that the proposals are acceptable from a highway's perspective.

### **Policy.**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

### **Kirklees Local Plan:**

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design

- LP28 – Drainage
- LP30 – Biodiversity & geodiversity
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and Improvement of environmental quality
- LP53 – Contaminated and unstable land

### **Supplementary Planning Guidance:**

- Highways Design Guide SPD
- Housebuilders Design Guide SPD

### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) December 2024, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

### **Assessment.**

#### **1) Principle of Development**

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission.

The principle of permitting the dwelling at the application site has been previously granted under application 2020/93329 and this application solely seeks to vary the approved plans.

The impact of the proposed changes on visual amenity, residential amenity, highway safety and all other material planning considerations will be undertaken.

Of consideration and relevance to the determination of this case is para 140 of the NPPF and in particular the requirement of this paragraph that Local Planning Authorities should seek to ensure that the quality of approved

development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

The assessment will therefore deal with the merits of the proposed variations.

## **2) Impact on Visual Amenity**

Since the decision on application 2020/93329, the Council have adopted the House Builders Design Guide SPD which sets out a number of design principles that should be followed in the design of new dwellings.

The most relevant of design principles to this scheme are:

- Principle 2 – residential developments will respect and enhance local character, taking cues from the built and natural environment, creating a positive coherent identity and utilising landscape opportunities.
- Principle 5 - buildings should be aligned and set-back to form a coherent building line and designed to front on to the street, enable important views to be maintained to provide a sense of place and protect amenity.
- Principle 12 – ensure that any garages are set back from the front door of the house or be carefully designed in terms of materials so that they are not the dominant feature.
- Principle 14 – have appropriately design windows that relate well to a street frontage.
- Principle 15 – ensure that rooflines relate well to a site's context.

It is noted that several of the variations proposed under this current Variations of Conditions application have been previous approved. The additions to the scheme under this current planning application are as follows:

- Car park over lower floor changed to accommodation, increasing the width of the dwelling at ground floor level by 3 metres.
- Addition of garage. The garage would be located to the front of the dwelling, to be sited within the long driveway. It would have a width of 5.9 metres, a depth of 5 metres and a height of 5.5 metres.

The proposed creation of accommodation in place of the car park over the lower floor would increase the width of the dwelling from 10 metres to 13 metres at ground floor level. It is considered that this increase in width would further reduce the openness of the site when compared with the design and architectural form of the dwelling previously approved under application 2020/93329, whereby the open car parking area helped in creating a sense of space around the dwelling. The increased width of the dwelling would move development even closer to the shared boundary with No. 42 Station Road, resulting in a separation distance of only one metre. This increased accommodation is concluded to be unacceptable from a visual amenity perspective, considered to result in a dwellinghouse which appears cramped within the site.

The proposed detached garage would be located to the front of the dwelling, to the long driveway which facilitates access from the highway to the dwelling approved under application 2020/93329 and No. 42A Station Road. Given the proposed siting of the garage, it is considered that it would appear as an overtly dominate stand-alone feature, when viewed from public vantage points along the highway of Station Road. The generous size / scale of the proposed garage contributes to its obtrusive appearance, to have a width of 5.9 metres, a depth of 5 metres and a height of 5.5 metres.

Given that the proposed garage would be set forward of the approved dwelling by approximately 19 metres and be of a dominating size / scale, it is concluded that it would be contrary to Principles 5 and 12 of the Housebuilders Design Guide SPD, whereby Principle 5 sets out *“careful consideration is given to accommodating garages and car parking within the development to ensure they are not visually dominant”* and Principle 12 sets out *“Ensure that any garages are set back from the front door of the house or are carefully designed in terms of materials so that they are not the dominant feature...”*

The garage would introduce a large amount of massing and brickwork which is in a prominent location which has no fenestration in place and would have a stark appearance in the street given it would not face into the street and would see blank elevations to the most prominent positions.

Having taken the above into account, the additional alterations within this Variations of Conditions application are considered to have a detrimental impact on the visual amenity of the application site and streetscene. Therefore, it is concluded that the proposal fails to comply with Policy LP24 of the Kirklees Local Plan, Principles 2, 5 and 12 of the Housebuilders Design Guide SPD and Chapter 12 of the NPPF.

### **3) Impact on Residential Amenity**

Section B of Policy LP24 of the Kirklees Local Plan states that proposals should:

*“...they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings”*

Further to this, Paragraph 135f) of the National Planning Policy Framework 2023 states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Principle 6 of the Housebuilders Design Guide SPD provides guidance to Officers to ensure that high standards of residential amenity could be achieved.

It is noted that several of the variations proposed under this current Variations of Conditions application have been previously approved. The additions to the scheme under this current planning application are as follows:

- Car park over lower floor changed to accommodation, increasing the width of the dwelling at ground floor level by 3 metres.
- Addition of garage. The garage would be located to the front of the dwelling, to be sited within the long driveway. It would have a width of 5.9 metres, a depth of 5 metres and a height of 5.5 metres.

The proposed creation of accommodation in place of the car park over the lower floor would increase the width of the dwelling from 10 metres to 13 metres at ground floor level and bring the built form of the dwelling closer to the shared boundary with No. 42 Station Road, resulting in a separation distance of only 1 metre between the dwelling and this neighbouring property.

The site is located to a higher topographical ground level than No. 42 Station Road and therefore, the impacts of bringing development closer to the shared boundary would be exacerbated. The creation of additional accommodation would result in an overbearing impact to the rear elevation of No. 42 Station Road and to its private amenity space. It is noted that the increased accommodation would be sited directly adjacent to a patio area within the rear garden of No. 42 Station Road, suggesting that it would impact a primary functional area of the garden for the occupiers of No. 42.

Furthermore, the application site is to the south of no.42, and as such it would result to an increased loss of daylight to no.42 as a result of the orientation of the site, and the size and scale of the development proposal in relation to no.42. It is considered this impact would be further exacerbated by the fact the proposal upon land which is at a higher land level in relation to no.42.

This variation to the previously approved plans would result in the scheme being contrary to Policy 6 of the Housebuilders Design Guide SPD, which sets out that a new dwelling, located in a regular street pattern, that is two storeys or above, should normally have a minimum of a 2-metre separation distance between the side wall of the new dwelling and a shared boundary.

With regard to the garage, whilst this would be sited up to the shared boundary with No. 42 Station Road, it would be directly adjacent to an area of landscaped front garden and therefore it is considered that, taking account of the size / scale of the garage and distance it would be sited from neighbouring properties, it would not lead to a detrimental impact upon the amenity of neighbouring occupiers.

Given the above, it is considered that the proposed development and the resultant additional built form, masonry of brickwork in close proximity to neighbouring occupiers leads to an unacceptable impact to the outlook of the occupiers of no.42 Station Road that would result in an detrimental levelly overbearing and oppressive development in relation to this neighbouring

property. The proposal therefore fails to be compliant with Policy LP24 of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework, posing unacceptable levels of overbearing and overshadowing towards the rear elevation of No. 42 Station Road and its rear private amenity space.

#### **4) Impact on Highway Safety**

Turning to highway safety, Policies LP21 and LP22 of the Local Plan have been considered along with the KC Highway Design Guide.

Following the submission of an amended plan and confirmation via email that the block paved area will be used for turning, KC Highways Development Management confirmed via informal consultation that they consider the proposals to be acceptable from a highway safety perspective.

In turn, the alterations to the scheme are not considered to be detrimental to highway safety.

#### **5) Other Matters**

##### Climate Change:

When determining planning applications, the Council will use the relevant Local Plan policies, the NPPF and guidance documents/SPDs to meet targets to achieve net zero carbon emissions. Due to the limited nature of the development proposed, with this been a Variation of Conditions application, it is not considered that specific mitigation measures are required to facilitate this development.

With regard to other matters that were assessed as part of the previous planning permission (Coal Mining, Ecology and Permitted Development Rights), the proposal is unchanged in relation to these aspects and any conditions or footnotes imposed in regard to these matters to make the development acceptable would have been reviewed as part of this application should the additions to the scheme have been concluded acceptable (garage and increased accommodation).

#### **6) Representations**

In response to publicity, two objections were received. These objections set out the following concerns with regards to residential amenity:

- This latest variation application will make an already bad situation intolerable for neighbours.
- Boundary of proposed development is closer to neighbouring property and concerned about the increased noise level and how this will impact enjoyment of neighbouring garden.

- Original plans already bears down on neighbour property and garden, blocking light and imposing on privacy, this variation will make this even worse.
- Concerned that the proposed building is going to overlook neighbouring property and impact privacy.
- Inevitable noise from a major build.

**Officer Response:** Assessment section 3 of this officer's report provides an in-depth assessment of the impacts of the additional developments upon residential amenity, including the garage and the increased accommodation.

## **7) Conclusion**

This application to vary condition 2 (plans list) on previous permission 2020/93329 has been assessed against relevant policies in the development plan as listed in the policy section of this report, the National Planning Policy Framework and other material considerations.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. For the reasons set out within this report it is considered that the development would not constitute sustainable development and is therefore recommended for refusal.

**Recommendation: Refuse**

### **Decision Authorisation – Delegated Powers**

**Application Number: 2024/92497**

**Officer Recommendation: Refuse**

### **Reasons for Refusal:**

1. The proposed increase in accommodation to the dwelling, by reason of its increased scale and massing in close proximity to the shared boundary with No. 42 Station Road would harm the visual amenities and character of the streetscene by removing the sense of space to the

side of the dwelling and resulting in built form which appears cramped within the street. The proposed garage, by reason of its prominent sitting, design, size and scale would result in a structure which appears overtly obtrusive to the front of the approved dwelling. Therefore, it is concluded that the increase in accommodation to the dwelling and detached garage would harm the visual amenities of the streetscene and to permit such a development, would be contrary to Policy LP24 of the Kirklees Local Plan, Principles 5 and 12 of the Housebuilders Design Guide SPD and policies within Chapter 12 of the National Planning Policy Framework. In turn, the garage would be contrary to paragraph 140 of the National Planning Policy Framework, which seeks to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

2. The increase in accommodation would result in undue levels of overbearing and overshadowing towards the rear elevation of No. 42 Station Road and its private amenity space. Therefore, the proposed increase in accommodation would be contrary to Policy LP24 of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and policies within Chapter 12 of the National Planning Policy Framework. In turn, this development would also be contrary to paragraph 140 of the National Planning Policy Framework, which seeks to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.

Plans and Specifications Schedule: -

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Elevations to Proposed Dwelling	BR 01 B	-	06.09.24
Lower Ground Floor	BR 02 / 01	-	06.09.24
Ground Floor	BR 02 / 02 A	-	06.09.24
Section B -B across site	05 C	-	06.09.24
Proposed Garage	06	-	06.09.24
Site Plan & Foul Drainage Plan	BR 03 C	-	30.10.24

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application.

The case officer informed the planning agent that the Local Planning Authority was unable to support this Variation of Conditions application for reasons of visual and residential amenity. The planning agent confirmed to the case officer to proceed to determine this application.

Notwithstanding this, in response to the consultation from KC Highways Development Management, the planning agent submitted an amended plan and also provided confirmation via email that the block paved area will be used for turning.

**Report Dated: 11.12.2024**